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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL HEINZ BRUDER

Appeal 2015-008145
Application 13/749,173¹
Technology Center 3700

Before MICHAEL C. ASTORINO, KENNETH G. SCHOPFER, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 1–20. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to the Appellant, “[t]he real party in interested is BRUDER SPIELWAREN GMBH & CO. KG.” Appeal Br. 1.

STATEMENT OF THE CASE

Claimed Subject Matter

Claims 1, 13, and 16 are the independent claims on appeal. Claim 1, reproduced below with added paragraphing, is illustrative.

1. A coupling for connecting two toy components, the coupling comprising:

 a first coupling part connected to one of the two toy components

 a second coupling part connected to the other of the two toy components,

 wherein the two coupling parts are connected to one another along a connecting axis such that said two coupling parts are rotatable relative to one another about said connecting axis,

 wherein one of the coupling parts comprises

 a receiving coupling part and said receiving coupling part comprises at least one locking guide receiving portion, said at least one locking guide receiving portion having a locking receiver extending in a peripheral direction about the connecting axis through more than 180°,

 wherein the other of the coupling parts comprises

 an insert coupling part and said insert coupling part has at least two insert guide portions, said insert guide portions being axially spaced apart from one another along the connecting axis and said insert guide portions being guided radially in the receiving coupling part,

 at least said at least one locking guide receiving portion generating a snap in retaining function as at least one of said insert guide portions is inserted in said receiving coupling part,

 wherein a first insert guide portion is simultaneously a counter-locking portion, which is received so as to lock in the locking guide receiving portion of the receiving coupling part,

 wherein a second insert guide portion is provided, which is guided in a second guide receiving portion of the receiving coupling part.

Rejections

I. Claims 1–20 are rejected under 35 U.S.C. § 112(b) or pre-AIA 35 U.S.C. § 112, second paragraph, as indefinite.

II. Claims 1–3, 5–13, and 15–19 are rejected under pre-AIA 35 U.S.C. § 102(b) as anticipated by Sorola (US 5,461,820, iss. Oct. 31, 1995).

III. Claims 4 and 14 are rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Sorola and Brumagin et al. (US 7,736,214 B2, iss. June 15, 2010, hereinafter “Brumagin”).

IV. Claim 20 is rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Sorola and Dörge (US 3,287,028, iss. Nov. 22, 1966).

ANALYSIS

Rejection I

The Examiner rejects claims 1–20 for various reasons, including: claims being narrative in form and replete with indefinite language; and not claiming structure clearly. Final Act. 2; *see id.* at 3; Ans. 9–10. The Examiner’s primary concern appears to be that the claims have terms, phrases, and limitations that “are either names, fancy terms or functional limitations lacking positively recited structure rendering the claim indefinite.” *Id.* at 2 (emphasis omitted).

The Appellant argues that the claims are not narrative and replete with indefinite language, rather the claims are directed to “positively recited structure” and “the scope of the claim is clear and fully understandable by a person of ordinary skill in the art.” Appeal Br. 11, 19; *see also id.* at 12–18. The Appellant’s argument is persuasive. After analyzing the Examiner’s rejection, it appears that the rejection is based generally on a position that

the claims should use more suitable language or modes of expression.² However, the Examiner does not identify any language in the claims that is unclear. *See In re Packard*, 751 F.3d 1307, 1310 (Fed. Cir. 2014).

The Examiner also points out that some claims include “reference characters” and appears to conclude that this practice does not positively recite structure. Final Act. 2. The Examiner also appears to suggest that the reference characters — and other aspects of the Specification — are not read into the claims. *Id.* at 2–3. Although dependent claims 2 and 12 include reference characters (*see* Appeal Br., Claims App.), the use of reference characters does not make claims indefinite. Rather, the use of reference characters in a claim is an acceptable practice according to the MPEP, which states with added emphasis:

Reference characters corresponding to elements recited in the detailed description and the drawings *may be used* in conjunction with the recitation of the same element or group of elements *in the claims*. The reference characters, however, should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. *The use of reference characters is to be considered as having no effect on the scope of the claims.*

² The Manual of Patent Examining Procedure (MPEP) § 2173.02 (II) instructs:

The examiner’s focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112(b) or pre-AIA 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision set forth in the statute, not whether more suitable language or modes of expression are available. . . . Some latitude in the manner of expression and the aptness of terms should be permitted so long as . . . pre-AIA 35 U.S.C. [§] 112, second paragraph, is satisfied.

MPEP § 608.01(m) (9th Ed. Rev. 7, Nov. 2015).

Thus, we do not sustain the Examiner's rejection of claims 1–20 under 35 U.S.C. § 112, second paragraph, as indefinite.

Rejections II–IV

We do not sustain the Examiner's rejections of claims 1–20 under § 102(b) as anticipated by Sorola and § 103(a) as unpatentable over Sorola in combination with Brumagin or Dörge because, as discussed below, they rely on inadequately supported findings. *See* Appeal Br. 20–22; Reply Br. 5–6.

Independent claims 1 and 13 are directed to a coupling having two coupling parts. Appeal Br., Claims App. One of these parts includes a “receiving coupling part” and the other of the parts includes an “insert coupling part.” *See id.* The “receiving coupling part” includes a “locking guide receiving portion” having a “locking receiver.” *Id.* The “insert coupling part” includes “insert guide portions.” *Id.*

Turning to the Examiner's rejection, the Examiner identifies Sorola's housing member 12 as the claimed “receiving coupling part” and Sorola's cavity 16 as the claimed “locking guide receiving portion.” Final Act. 3–4; *see* Sorola Fig. 1. As for the claimed “locking receiver,” the Examiner finds that U-shaped retainer 48 corresponds with the claimed “locking receiver.” Final Act. 4; *see* Sorola Figs. 1, 6. Also, the Examiner identifies elongate body member 38 as the claimed “insert coupling part” and journal 26 and enlarged head 46 as the claimed “insert guide portions.” *See* Final Act. 3, 4.

Notably, independent claims 1 and 13 require that the locking guide receiving portion of the retaining coupling part includes the ability to

generate a snap when inserting the insert guide portion of the insert coupling part. *See id.* And, it appears that the Examiner is relying on retainer 48 as the structure that provides the function of “generating a snap in retaining function,” as recited in independent claims 1 and 13. *See* Final Act. 4; Ans. 10, 12. We base this understanding on the Examiner’s finding that “at least one locking guide receiving portion generating a snap in retaining function (2:58-67) and the second insert guide (46) is received in the receiving coupling part.” Final Act. 4; Ans. 10, 12. Here, the Examiner relies on Sorola at column 2, lines 58–67, which describes with italics added:

A U-shaped retainer **48** has a radial slot **50** therein having an arcuate inner surface **52** formed on a radius corresponding substantially to that of the spindle **44**. The slot **50** has a width dimension slightly less than that of the spindle **44** which enables the retainer to be *snap-fitted* onto the spindle between the head **46** and the journal **12**. The radius on which the surface **52** is formed is smaller in diameter than that of the head **46** so that one end face **54** of the retainer **48** confronts an inner shoulder **56** of the head **46** to maintain the retainer **48** on the spindle **44**.

For the Examiner’s finding to apply reasonably to the claimed invention a person of ordinary skill in the art would have to agree that cavity 16 includes as part of its structure retainer 48. *See* Reply Br. 5–6. We determine that a person of ordinary skill in the art would not agree with this finding.

Retainer 48 is snap-fitted to reduced diameter shank 44 of spindle 40, and then inserted in cavity 16. *See* Sorola col. 2, ll. 58–67, col. 4, ll. 7–25. After being inserted into cavity 16, the only structural connection between retainer 48 and cavity 16 is through components associated with the elongate body member 38, which the Examiner identifies as the claimed “insert

coupling part.” In view of the foregoing, we find that one of ordinary skill in the art would not understand retainer 48 as a structural component of cavity 16 (“locking guide receiving portion”) or, more broadly, housing member 12 (“receiving coupling part”).

Alternatively, the Examiner may be suggesting that a snap is generated between cavity 16 and head 46. However, as pointed out by the Appellant and as discussed above, no snap is generated between cavity 16 and head 46 when inserting head 46 into cavity 16. *See* Appeal Br. 21.

Thus, for the foregoing reasons, we do not sustain the Examiner’s rejections of claims 1–15. Independent claim 16 is similar to independent claims 1 and 13. *See* Appeal Br., Claims App. The Examiner relies on similar findings for independent claim 16 as those discussed above. *See* Final Act. 6. And, for similar reasons, we do not sustain the Examiner’s rejections of claims 16–20.

DECISION

We REVERSE the Examiner’s decision rejecting claims 1–20.

REVERSED